APR 23 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NOS. 443 AND 444.

MAURICE CAMPBELL, Federal Prohibition Administrator, JAMES M. DORAN, Commissioner of Prohibition, and ANDREW W. MELLON, Secretary of the Treasury,

Defendants-Petitioners,

against

GALENO CHEMICAL COMPANY, INC., UNION COURSE PHARMACY, INC., P. T. CHEMICAL COMPANY, INC., and ARTHUR S. KATZENBOGEN, doing business under the style and trade name of the Curatone Company,

Plaintiffs-Respondents.

MAURICE CAMPBELL, JAMES M. DORAN and ANDREW W. MELLON,

Defendants-Petitioners,

against

D. P. PAUL & COMPANY, INC.,

Plaintiff-Respondent.

BRIEF FOR THE RESPONDENTS

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April, 1930.

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OCTOBER TERM, 1929.

MAURICE CAMPBELL, Federal Prohibition Administrator, JAMES M. DORAN, Commissioner of Prohibition, and ANDREW W. MELLON, Secretary of the Treasury, Defendants-Petitioners, against GALENO CHEMICAL COMPANY, INC., UNION COURSE PHARMACY, INC., P. T. CHEMICAL COMPANY, INC., and ARTHUR S. KATZENBOGEN, doing business under the style and trade name of the Curatone Company, Plaintiffs-Respondents.	No. 443.
MAURICE CAMPBELL, JAMES M. DORAN and ANDREW W. MELLON, Defendants-Petitioners, against D. P. PAUL & COMPANY, INC., Plaintiff-Respondent.	No. 444.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENTS

These are writs of certiorari to decrees of the United States Circuit Court of Appeals for the Second Circuit,

affirming interlocutory injunction orders of the United States District Court for the Southern District of New York. These injunction orders enjoined the defendants *pendente lite* from enforcing against plaintiffs Section 218 of Regulations 2 of the Bureau of Prohibition, and from interfering with plaintiffs in the use and enjoyment of permits issued to them under Section 4, Title II of the National Prohibition Act to manufacture *medicinal preparations unfit for use for beverage purposes* "except only by revocation after hearing and otherwise as provided by law and regulations." (R. 25)

Preliminary Statement.

The plaintiffs are manufacturers of medicinal preparations unfit for use for beverage purposes, in the manufacture of which they use whisky, wine and alcohol. One, at least, of them is the corporate successor of a business established since 1890. (R. 42)

The Paul, Katzenbogen and Union Course companies hold "H" permits authorizing them to manufacture such non-beverage articles under Section 4 of Title II of the Prohibition Act. Their permits were issued between January 22, 1925, and May 19, 1925. (R. 47, 12, 14) During that time Section 260 of Regulations 60 provided that "H" permits should

> "continue in full force and effect so long as the supporting bond required by these regulations remains in full force and effect, or until canceled, suspended, revoked, or voluntarily surrendered by the permittee."

The Galeno and P. T. Chemical permits were issued on November 20, 1926. (R. 16 and 15) At that time T. D. 3925 provided that "H" permits should

> "continue in operation until surrendered by the permittee, or there is a failure of required bond or revocation on citation and hearing."

Each permit was issued on a prescribed form and contained upon its face provisions as to duration appropriate to the language of the above regulations.

None of plaintiffs' permits have been surrendered and the bonds filed by them at the time of the issue of their permits are still in full force and effect. (R. 4 and 43)

No proceedings have been instituted or are now pending against plaintiffs for the revocation of their permits. (R. 4, 7, 43)

On September 2, 1927, the defendants issued Regulations 2, effective October 1, 1927, in which it was provided by Section 218 that the basic permits of the plaintiffs should, notwithstanding their express provisions, expire December 31, 1928. Although the section of the regulations uses the word "expire," it obviously is a revocation of plaintiffs' permits and has so been treated by all courts which have considered its validity, irrespective of what their determination has been. The defendant's brief likewise proceeds upon the theory that the section revoked plaintiffs' permits. That the regulation was a revocation of plaintiffs' permits will not, therefore, be further discussed.

The orders affirmed by the Circuit Court of Appeals in these cases restrain the enforcement of this regulation and prevent the revocation of the plaintiffs' permits "except only by revocation after hearing and otherwise as provided by law and regulations." (R. 25)

The Structure of Title II of the Prohibition Act.

Section 1 treats liquor and intoxicating liquor as synonymous and defines them as including "alcohol, brandy, whisky, rum, gin, beer," etc., and "any spirituous, vinous, malt or fermented liquor, liquids, and compounds" containing more than one-half of 1 per centum of alcohol by volume *"which are fit for beverage purposes."**

Section 4 relates to the manufacture of *articles*, including denatured alcohol, medicinal preparations, proprietary medicines, toilet preparations, and the like, all of which by the statute are required to be *"unfit for use for beverage purposes."* One who desires to manufacture these "articles" and to purchase and possess liquor for that purpose, is required to have two permits—one "to manufacture such articles" and the other "to purchase such liquor." This Section 4 makes no further mention of permits "to manufacture such articles" and contains no limitations upon their nature.

Section 5 provides the manner by which the permits "to manufacture such articles" may be revoked, if the article fails to correspond with its permitted formula.

Section 6 relates to permits to manufacture, prescribe, sell or transport *liquor* and limits their duration. The section also specifically provides that the secondary permit to purchase *liquor* which every holder of a Section 4 permit must have, shall not be in force to exceed ninety days from issuance and that all other permits to purchase *liquor* shall not be in force for more than thirty days.

Section 9 provides generally the causes for and the manner in which permits may be revoked.

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* All italics in this brief are supplied unless otherwise indicated.

History of the Regulation.

The original regulations issued under Title II of the National Prohibition Act were called Regulations 60 and were effective January 17, 1920. At the same time, Regulations 61 were issued under Title III. Both regulations were revised from time to time.

After the passage of the Act of March 3, 1927, establishing the Bureau of Prohibition in the Treasury Department, new regulations were issued under these titles and called Regulations 2 and 3 respectively.

Regulations 60, as effective March 1, 1924, provided that some classes of permits should be of annual duration, and that the type "H" permits held by these plaintiffs, to manufacture "articles" "unfit for beverage purposes," should be valid until surrendered or revoked.

On November 14, 1925, the authorities attempted to revoke all permits as of December 31, 1925, by a general regulation, T. D. 3773. This attempt ignored the limitations placed upon revocations by Sections 5 and 9, Title II of the Act, providing for revocation only after cause shown upon a hearing. T. D. 3773 was declared invalid by the United States Circuit Court of Appeals for the Second Circuit in the case of *Higgins* v. *Foster*, 12 F. (2d) 646, decided June 5, 1926.

This decision was accepted by the authorities, who, on September 1, 1926, issued T. D. 3925, which again provided that some classes of permits should be of annual duration and others, including the "H" permits, valid until surrendered or revoked.

On November 9, 1926, the Circuit Court of Appeals for the Seventh Circuit in *Chicago Grain Products Co.* v. *Mellon*, 14 F. (2d) 362, a case involving a permit to manufacture denatured alcohol, held in sustaining the refusal to renew and the revocation of the permit that T. D. 3773 "did nothing more than state the law

of the National Prohibition Act," on the ground that a permit to manufacture denatured alcohol was a permit to manufacture "liquor" within the meaning of Section 6, and, therefore, might be valid for no longer than one year.

Section 218 of Regulations 2, effective October 1, 1927, purported to revoke all permits as of December 31, 1928. These suits (Nos. 443 and 444) test the validity of Section 218 of Regulations 2. Nos. 445, 510 and 511, with which these plaintiffs are not concerned, test the validity of Article 95 of Regulations 3, which purports to revoke permits to manufacture or use denatured alcohol as of December 31, 1928.

These certioraris therefore, generally speaking, review the case of *Higgins* v. *Foster* as well as the decrees directly presented. Part of the reasoning of the Court below on the controversies here presented is found in the opinion in the *Higgins* case and part in the present record.

Summary of Argument.

First: Medicinal preparations manufactured by plaintiffs are not "liquor" within the meaning of Section 6, Title II.

Second: The first two paragraphs of Section 6, Title II, do not apply to basic permits to manufacture non-beverage articles under Section 4. They relate solely to liquor.

Third: Any requirement of Section 6 that the permit shall designate and limit the time when the acts may be performed was complied with in plaintiffs' permits.

Fourth: Permits cannot be revoked by a general regulation without regard for the limitations placed by Sections 5 and 9 of Title II upon revocations.

FIRST: Medicinal preparations manufactured by plaintiffs are not "liquor" within the meaning of Section 6, Title II.

Section 1 of Title II provides:

> "When used in Title II and Title III of this Act (1) the word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are *fit for use for beverage purposes* * * *."

Section 4:

> "The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this act if they correspond with the following descriptions and limitations, namely:
>
> (a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.
>
> (b) Medicinal preparations * * * *unfit for use for beverage purposes.*
>
> (c) Patented, patent, and proprietary medicines that are *unfit for use for beverage purposes.*
>
> (d) Toilet, medicinal, and antiseptic preparations and solutions that are *unfit for use for beverage purposes.*

(e) Flavoring extracts and sirups that are *unfit for use as a beverage, or for intoxicating beverage purposes.*

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the *articles* mentioned in this section may purchase and possess *liquor* for that purpose, but he shall secure permits to manufacture such *articles* and to purchase such *liquor* * * *."

Section 6:

"All permits to manufacture, prescribe, sell, or transport *liquor,* may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided,* That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided further,* That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance * * *."

Section 10 of Title III provides:

"* * * denaturing plants may be established * * * and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, *unfit for use as an intoxicating beverage.*"

The National Prohibition Act is entitled "AN ACT *to prohibit* intoxicating beverages, and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes."

The Act itself emphasizes this distinction between the prohibition of intoxicating beverages or *liquor* and the manufacture and sale of lawful *articles* containing alcohol or other high-proof spirituous liquids. Title I of the Act relates wholly to the enforcement of war prohibition and is irrelevant. Section 1 of Title II, the first section dealing with enforcement under the Eighteenth Amendment, defines the word "liquor" and the phrase "intoxicating liquor" as synonymous and as including alcohol, brandy, whisky and other named liquids, and in addition thereto any liquid containing one-half of one per centum or more of alcohol "which are fit for use for beverage purposes." The whole intendment of the Act is directed toward the prohibition of the manufacture, sale and transportation of such liquids. The Act did not make it unlawful to use alcoholic products for non-beverage purposes.

In *United States* v. *Katz*, 271 U. S. 354, this Court said (p. 358):

> "But the Eighteenth Amendment did not prohibit the use of intoxicating liquor for other than beverage purposes, and an important purpose of the Act, as its title and contents show, was to regulate the manufacture, transportation and use of intoxicating liquor for other than beverage purposes."

Section 3 provided that liquor (intoxicating by definition) for non-beverage purposes and wine for sacramental purposes might be manufactured, purchased, sold, etc., and Section 4 provided that patent and proprietary medicines, toilet, medicinal and antiseptic preparations, in which intoxicating *liquor* was *used* in the process of manufacture, might still be manufactured.

Of course, to make the prohibition of the Act effective, Congress regulated and supervised those uses of intoxicating liquor which were not prohibited. So the regulatory features of Section 4 were directed against the liquor to be used in the manufacture of those articles, and, of course, not against the other ingredients. If the *articles* were compounded in accordance with the statute, they were exempt from the prohibition of the Act, even though they contained *liquor* as an ingredient. All of the products listed in Section 4 are required to be "unfit for use for beverage purposes." This requirement as to medicinal preparations and the like is contained in the Section itself. Denatured alcohol is elsewhere in the Act (Section 10 of Title III) defined as "unfit for use as an intoxicating beverage." It needs no argument to suggest that vinegar is not a beverage and preserved sweet cider is not intoxicating.

The legislative intent in Section 4 to distinguish between *liquor* and those *articles* which might lawfully be manufactured, even though they contain liquor, is clear. The Section provides:

> "The *articles* enumerated in this section"

and again

> "A person who manufactures any of the *articles* mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such *articles* and to purchase such *liquor*, give the bonds, keep the records, and make the report specified in this Act and as directed by the Commission. No such manufacturer shall sell, use, or dispose of any *liquor* otherwise than as an ingredient of the *articles* authorized to be manufactured therefrom."

The statutory distinction between *liquor* which includes everything under the Act fit for use as an intoxicating beverage and these articles which are defined as *unfit* for such use is manifest.

It is suggested, however, that the *articles* enumerated in Section 4 are themselves liquor until they have been manufactured and prepared for the market (Brief, p. 11). But aside from the liquor in the article, there is no contention that any other ingredient is intoxicating or its use interdicted by any law of Congress. Of course, the alcohol, whisky or wine used in the manufacture is liquor. The point is that after the liquor and the other ingredients have been compounded, an article containing a high alcoholic content is, nevertheless, exempt from the prohibition of the Act if it is "unfit" for beverage purposes. That is the construction of the introductory sentence of Section 4, which provides:

> "The articles enumerated in this section shall not after having been manufactured and prepared for the market, be subject to the provisions of this Act, if they correspond with the following descriptions and limitations, namely."

This construction is fortified by a reference to Section 1, which provides that liquids whether medicated, proprietary, patented or not and by whatever name called, containing more than one-half of one per centum of alcohol and which are fit for use for beverage purposes, are *liquor*. The *articles* in Section 4 are required to be "unfit" for such use. The distinction is whether they are fit for beverage use or not.

Section 4 does not state, for example, that the following *articles* after manufacture shall not be con-

sidered to be *liquor*. If it did, there might be some basis for an argument that the Section 4 created an exception to the definition of Section 1. On the contrary, it provides that the *articles* after they have been manufactured and when they contain alcohol, whisky, etc., shall, nevertheless, not be subject to the provisions of the Act—an act prohibiting the manufacture, sale, etc., of liquor.

All this is rendered clearer when it is observed that Section 4 requires two permits—one, to manufacture the articles which will contain the liquor, and the other to purchase such liquor for such purposes. Section 402 of Regulations 2 specifically provides:

> "Permits to purchase shall be issued only for the kinds, and not to exceed the quantities, of liquors as designated and restricted in the basic permit of the applicant."

Article IV of Regulations 60 contains a similar requirement.

The permits under which the actual liquor is handled prescribe in minutest detail every precaution against the diversion of the liquor before it is compounded.

Nor is there any merit in the suggestion that all articles "mediately" fit for use for beverage purposes are liquor (defendants' brief, p. 10). The argument is constructed by saying that pure alcohol is not mediately fit for beverage purposes, but may be made so by adding water. And, of course, the defendant suggests there is no argument but that pure alcohol is liquor, even though it requires treatment before it is fit for use for beverage purposes. The Government then argues that denatured alcohol needs only to be

renatured and water added before it, too, is fit for beverage purposes. The argument overlooks the statute. Alcohol is an intoxicating liquor not because it is fit for beverage purposes but by express legislative definition. Section 1 provides:

> "The word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, etc."

And denatured alcohol is defined by Section 10 of Title III as alcohol with which there has been admixed such denaturing materials as shall render the alcohol unfit for use as an intoxicating beverage. It is not necessary to dispute as to what can and what cannot be done with denatured alcohol. By statute, it has been distinguished from alcohol. The latter expressly has been classified as liquor and the former expressly excluded from the definition. We cannot add to the Congressional definition of liquor. See *Higgins* v. *Foster,* 12 F. (2d) 646 (C. C. A., 2nd Circ.); *Casper* v. *Doran,* 30 F. (2d) 400 (D. C. Pa.); *Glenwood Distilling Co.* v. *Doran,* 30 F. (2d) 818 (D. C. Pa.); *Sherman* v. *United States,* 10 F. (2d) 17 (C. C. A., 6th Circ.); *Brown* v. *United States,* 21 F. (2d) 827 (C. C. A., 5th Circ.). The use of denatured alcohol is subject to regulation by Congress, not because it is an intoxicating beverage, but because Congress can hedge about its making and disposition every reasonable precaution to prevent it from being diverted into illicit channels, just as formerly Congress could regulate its use and disposition to prevent it from being used for beverage purposes tax free. *Selzman* v. *United States,* 268 U. S. 466, 469. But the existence of such power of regula-

tion does not destroy the carefully created statutory distinction between liquor or intoxicating liquor on the one hand and those other articles, including denatured alcohol, which are *unfit* for beverage purposes.

But these plaintiffs are not manufacturing denatured alcohol. There is not the faintest suggestion in the record or in the defendant's brief that the medicinal preparations manufactured by these plaintiffs are susceptible of treatment which would render them capable of use for beverage purposes. No such suggestion could be made as the ingredients in a medicinal preparation so blend that separation is impossible.

The decisions in *Cywan* v. *Blair*, 16 F. (2d) 279, and *Chicago Grain Products Co.* v. *Mellon*, 14 F. (2d) 362, add nothing to the argument in the defendant's brief.

SECOND: The first two paragraphs of Section 6, Title II, do not apply to the basic permits to manufacture non-beverage articles under Section 4.

The plaintiffs' permits to manufacture non-beverage articles under Section 4 do not relate to the manufacture, sale, purchase or transportation of *liquor*, and accordingly are not within the purview of the first two paragraphs of Section 6 (printed in full in the Appendix, *infra*, pp. 43-45). Clearly, the first paragraph of Section 6 relates solely to liquor. It is suggested, however, that the second and third sentences from the last in the second paragraph of this section are applicable to the basic Section 4 permits. These provide:

> "Every permit shall be in writing, be dated when issued, and signed by the Commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and the place where such acts may be performed."

Without now discussing whether the limit of time referred to in these sentences is not sufficiently met by the provisions of the plaintiffs' permit, it is submitted that these sentences do not apply to permits to manufacture non-beverage articles under Section 4.

This is manifest from the construction of the paragraph itself. The first sentence of the second paragraph of this section relates to permits to manufacture, prescribe, sell or transport *liquor*, and provides for their annual expiration. The first proviso, however, is that the Commissioner may extend "any permit granted un-

der this Act." The second proviso, on the other hand, is again carefully limited to permits to purchase *liquor*. The next two sentences relate to other permits to purchase *liquor*. The next sentence provides that no permit shall be issued to any person who within one year prior thereto shall have violated any of the liquor laws. The next sentence deals with permits to sell *liquor* at retail. The next relates to permits prescribing liquor. Then follows the two sentences above quoted.

From this is it plain that the subject of this second paragraph is permits to manufacture, sell, purchase, transport or prescribe *liquor;* that this paragraph is an amplification of the first paragraph which contains the express provision of the Act against the manufacture, sale, purchase, transportation or prescription of *liquor* without a permit. The paragraph is carefully drawn, and when Congress intended that all permits of every kind should be dealt with, it said:

"Any permit granted under this Act."

This legislative intent is strengthened when it is recalled that under Section 4 two permits are required, one to manufacture the non-beverage article, the other to purchase and possess liquor for that purpose. Not content with requiring a permit to manufacture, Congress specifically provided for a second permit to purchase and possess the alcohol, and in Paragraph 6 provided that such a permit "to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the date of issuance."

Whenever it was intended to refer to other sections of the Act, Congress did so clearly.

The third paragraph of Section 6, authorizing the Commissioner to prescribe the form of all permits and providing that in the event of the refusal by the Commissioner of any application, the applicant may have a review of his decision before a court of equity, relates, as has been repeatedly assumed and held, to permits to manufacture non-beverage articles under Section 4. This was assumed by this Court in *Ma-King Products Co.* v. *Blair,* 271 U. S. 479, and specifically held in *Driscoll* v. *Campbell,* 33 F. (2d) 281. But it does not follow that because the third paragraph is of general application to all permits under the Act, that the first two preceding paragraphs so relate. *Rather since Paragraph 3 admittedly applies to all permits, it would seem that if Congress had intended these two sentences to apply to all permits, it would have placed them in the third paragraph of the section and not in the second.* Moreover, that portion of the third paragraph of Section 6 which relates to review, specifically refers to Section 5 of the Act of Title II, which deals with the revocation of permits to manufacture non-beverage articles issued under Section 4.

If it be suggested that such a construction results in one type of permit being of definite duration and another type being of indefinite duration, the reason for the statutory classification is clear. The basic permit to manufacture non-beverage articles under Section 4 deals with the regulation of lawful, proper and necessary business. The basic permit to manufacture, sell, etc., liquor under Section 6 deals with a business solely concerned with a prohibited commodity requiring the most severe restrictions. The secondary permit to purchase liquor for manufacturing purposes, referred to

in Sections 4 and 6, deals with a permitted traffic in the otherwise forbidden commodity.

The basic permit to manufacture non-beverage "articles" under Section 4 merely authorizes the permitee to *engage in such business and does not authorize him to obtain any specific liquor.* The permits to purchase liquor for use in such manufacturing are required by Section 4 and more fully defined by Section 6.

This distinction in the legislative purpose between these two types of permits was observed by the District Court in *Casper* v. *Doran,* 30 F. (2d) 400, where Judge Dickinson said (p. 402):

> "The restricted permit related to a forbidden product, to wit, an intoxicating alcoholic beverage, which was primarily an unlawful thing, and only lawful when devoted to a very limited use. The producer was in consequence kept under the strictest surveillance. *The unrestricted permit was for a lawful product,* which had nothing to do with intoxicating beverages, except that an opportunity was thereby afforded for an unlawful diversion. The permittee was in consequence to be left free to carry on his lawful business as long as he was guilty of no unlawful act."

Judge Dickinson also said (p. 401):

> "The argument in support of the time limitation of the permit begins and ends with the provision in one clause of section 6 of title 2 of the act * * * which undoubtedly limits all permits there mentioned to an expiration on the last day of each month. It is just as clear, however, that this clause refers to permits to produce 'liquor,' as defined in the act, and that it does not refer

to permits to manufacture the 'articles,' the manufacture of which is provided for in section 4 of title 2.

The argument is addressed to us that the quoted clause in section 6 of title 2 must include permits to engage in non-beverage articles, because otherwise there would be no provision for the appeal to the court in the case of the refusal or revocation of permits granted to manufacturers of non-beverage articles named in section 4 of title 2. A reading of the act takes all force from this argument, because it is thus made clear that the time limitation clause includes only permits to produce alcohol and potable liquors, and the clauses providing for reviews by the courts apply to *all* permits, being thus inclusive of both potable 'liquor' permits and permits for non-potable 'articles.'" (Italics are the Court's.)

The same view was taken in *Higgins* v. *Foster*, 12 F. (2d) 646, where the Court said (p. 648):

"We said before that section 6 had no relation to denatured alcohol, and as respects the first two paragraphs to that we adhere, and for the reason there given that 'liquor' includes alcohol, but not denatured alcohol. Indirectly it does touch the manufacture of denatured alcohol, *since it sets a period and other conditions upon permits for the purchase of alcohol for manufacturing, of which one form is making denatured alcohol.* * * * *The permits to purchase alcohol for denaturing, which section 4 requires, are subject to section 6.* * * *

The words 'purchase and receipt of alcohol thereat' (from the Higgins permit) *do not give the plaintiff the right to any specific alcohol. This he must get under permits to purchase under section 4, which, as we have just said, are all subject to the limitations of section 6.*"

THIRD: Any requirement of Section 6 that the permit shall designate and limit the time when acts may be performed was complied with in plaintiffs' permits.

If it be held, however, that these sentences in Section 6 requiring that a permit shall designate and limit the acts that are permitted and the time when and the place where such acts may be performed, apply to all permits under the Act and not simply to permits to manufacture, sell and transport liquor, then it is submitted that the limitations contained in the plaintiffs' permits complied with the statutory requirement. The permits are limited upon their face as follows:

> "This permit is effective from the date hereof, and will remain in force unless revoked, suspended, or renewed, as provided by law or regulations." (*Union Course Pharmacy,* R. 14; *P. T. Chemical Company, Inc.,* R. 15; *Galeno Chemical Company,* R. 16; *Katzenbogen,* R. 12; *P. D. Paul,* R. 48).

A. *These sentences of Section 6 only require that a permit contain a provision declaring its duration; they do not mean that the permit must be limited to a day certain.*

As the Court below said (R. 34-35):

> "The language does not mean that the permit must expire by the calendar, but only that it must 'designate and limit' its own duration; its temporal like its spatial termination must be stated. This was doubtless in order that there should be no controversy over the period within

> which the acts allowed should be lawful. An uncertain event is as effective as a certain. It is apparent that when Congress meant to circumscribe the commissioner's powers by fixing a duration measured by months or days, it did so expressly. Those permits to manufacture, prescribe, sell or transport liquor were not to last beyond December 31st of the succeeding year; a permit to buy it not more than 30 or 90 days, as the case might be. There were no such periods set for other permits, and there is no reason to suppose that more was intended than that the term of their validity should be declared, however measured."

It is submitted that the meaning of the provision as to "limit" is simply to require that the permit contain notice to the permittee of the duration of his permit, in the same spirit in which Section 6 of the Interstate Commerce Act requires the publication of rates. There was to be no basis for doubt as to the duration of the permit. Any of several events might cause the permit to lose its operative effect and these were to be duly noted: (1) The permit might be revoked pursuant to Sections 5 or 9; (2) The permit might be suspended* pursuant to Section 5 of Title II or Secs. 407 or 519, Regs. 2; (3) There might be a failure of bond, leading to a temporary dormancy of the permit (Sec. 4). Of all of these possibilities Section 6 required that the permittee be advised on the face of the permit.

Certainly there is nothing in the word "limit" which requires it to be construed as meaning "calendar limit." Perhaps the most frequent use of the word

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*The assertion at page 17 of defendants' brief that the word "suspended" in plaintiffs' permit is surplusage because "there is no provision in law for the 'suspension' of a permit" is incorrect. The sections of statute and regulations above mentioned make such provision.

"limit" occurs in connection with the law of real property. That an estate is "limited on a life in being" is a familiar expression. It is also proper to say that the tenure of office of a United States judge is "limited to life or good behavior."

B. *Prior to the National Prohibition Act the duration of permits for the use of alcohol, etc., in medicinal and like preparations was limited to revocation for cause. There was no intention to change that system in the Prohibition Act.*

The construction sought to be placed upon these sentences by the defendants would mean that the Act in an important respect altered the then existing regulatory system with respect to permits to manufacture medicinal preparations. This Court has held that no such change was intended by the Act.

In *United States* v. *Katz*, 271 U. S. 354, this Court considered in some detail the regulatory system established by the National Prohibition Act, and said in part (p. 359):

> "The reports of the committees of the Senate and House having the bill in charge, as well as the statute as adopted, indicate clearly that the purpose of Congress was to take over and establish *a well known system of granting permits* and requiring reports and records, for the purpose of regulating and controlling such portion of the liquor traffic as had not been prohibited by the Eighteenth Amendment and the National Prohibition Act."

The Court in a foot-note then quoted from report No. 91, Part I, of the House Judiciary Committee, June

30, 1919, to accompany H. R. 6810, which became the National Prohibition Act, the following statement from page 2 of the report:

> *"Title 2, to enforce prohibition under the Eighteenth Amendment to the constitution, contains substantially the same features as Title 1, and in addition a system of permits such as is now in force under regulations of the Revenue Department, Treasury Decision 2788, and in the various prohibition codes."*

The regulatory system set up by Treasury Decision 2788 thus expressly referred to by the committee (February 6, 1919), under the Lever Act (40 Stat. 276) and the Revenue Act of 1918 (40 Stat. 1057, 1105-1116), was for the purpose of preventing liquor released for commercial purposes being used for beverage purposes, a tax of only $2.20 per gallon being imposed upon liquor used for commercial purposes, whereas a tax of $6.40 per gallon was imposed upon liquor used for beverage purposes. That system provided for permits to manufacture medicinal preparations *limited in respect of time solely by the prospect of revocation by the Commissioner of Internal Revenue and containing no calendar time limitation.*

Section 8 of T. D. 2788 (Appendix, p. 50) provided that only permittees should be permitted to obtain distilled spirits or wines for other than beverage purposes, and paragraph (m) thereof (Appendix, p. 51) set forth the form of permit which was required. Then paragraph (n) (Appendix, p. 52) provided as follows:

> *"The application* [for the permit] *so approved, which by the act of approval becomes a continu-*

ing permit, is non-transferable and may be revoked and canceled by the Commissioner of Internal Revenue or by the collector of the district."

Paragraph "j" (Appendix, p. 51) specified the conditions under which a permit might be revoked:

> "If it should appear on proper showing made at any time that the party to whom the permit has been issued has wilfully violated any of the provisions of the law or regulations relating to the using or handling of such spirits or wines, it shall be the duty of the Collector to recall and cancel the permit and report the facts to the Commissioner of Internal Revenue with his recommendations in the premises."

And like Title II of the Prohibition Act, T. D. 2788 made separate provisions for a permit to obtain specific liquor—Section 10. The basic permit did not in itself entitle the permittee to specific liquor.

Thus the regulatory system in effect immediately preceding the adoption of the Prohibition Act provided for permits to use alcohol, etc., for non-beverage purposes limited only by the power to revoke for cause. It was this system which was carried over into the Prohibition Act, as this Court so expressly pointed out in the *Katz* case (271 U. S. 354).

C. *The statute not requiring a limitation fixed by the calendar, the enforcement officers have no power to prescribe such a limitation by regulations.*

Section 3 authorizes permits for the manufacture, purchase, sale, barter, transportation, importation, exportation, delivery, furnishing and possession of liquor

for non-beverage purposes and wine for sacramental purposes. Section 4 authorizes permits to manufacture the non-beverage articles listed in that section. As to all these permits, the only limitation as to duration which Congress thought necessary to prescribe was liability to revocation.

Section 6 authorizes permits to manufacture, sell, purchase, transport and prescribe *liquor* (that is, intoxicating beverages). As to these permits, Congress prescribed a calendar limitation. The defendants could not, under the guise of regulations, insert a requirement that the plaintiffs' permits under Section 4 be limited by the calendar when Congress had inserted no such requirement.

The power of enforcement officers to extend the statute of Congress by regulations has often been denied by this Court. In *Morrill* v. *Jones,* 106 U. S. 466, an Act of Congress provided that:

> "Animals, alive, specially imported for breeding purposes from beyond the seas, shall be admitted free [of duty], upon proof thereof satisfactory to the Secretary of the Treasury, and under such regulations as he may prescribe."

The Secretary issued regulations which provided that, before admitting such animals, the various collectors of customs must

> "be satisfied that the animals are of superior stock, adapted to improving the breed in the United States."

This ruling was held unlawful by this Court, which said (p. 467):

> "The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All

> he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted. * * * The regulation acted upon by the Collector was in excess of the power of the Secretary. *** * * This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe."**

In *United States* v. *Grimaud,* 220 U. S. 506, this Court said (p. 517):

> "From the beginning of the Government various acts have been passed conferring upon executive officers power to make rules and regulations—not for the government of their departments, but for administering the laws which did govern. None of these statutes could *confer legislative power.* But when Congress had legisalted and indicated its will, it could give to those who were to act under such general provisions 'power to fill up the details' by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress or measured by the injury done."

In *Waite* v. *Macy,* 246 U. S. 606, the Act of March 2, 1897, permitted the exclusion of tea from import, if inferior to the standard of purity, quality and fitness for consumption. The Secretary of the Treasury had power to enforce the law by regulations. He provided that if the tea had any artificial coloring matter whatsoever in it, it should be excluded. The Court said (pp. 609-610):

> "We are brought then to the merits, and we are of opinion that the rule cannot be sustained,

notwithstanding that since a former board refused to follow it as it then stood, there has been added clauses intended to save it as a chemical analysis. The regulation makes the presence of any coloring matter an absolute ground for exclusion. But the only grounds recognized by the statute are inferiority to the standard in purity, quality and fitness for consumption, words repeated over and over again in the act. It cannot be made a rule of law that any tea that has an infinitesimal amount of innocuous coloring matter is inferior in those respects to a standard that has a much greater amount of other impurities and is worth only a quarter as much. All extraneous substances are impurities, and the presence of any may be detected in any way found efficient. But one such substance cannot be picked out and accorded supremacy in evil by an absolute rule irrespective of any harm that it may do. We go one step further and add that in view of the facts as to the standard and this tea, the presence of the Prussian blue affords no adequate ground for keeping the tea out.

The Secretary and the board must keep within the statute."

These well settled principles have been applied by the Courts to regulations under the Prohibition Act.

Thus Section 1 of Title II prohibits the use of the words "beer, ale or porter" on non-intoxicating cereal beverages. Treasury Decision 3084 prohibited the use of "the well-known synonyms for same, such as Lager, Bock or Stout." In *Oertel Co.* v. *Gregory*, 270 Fed. 789, this ruling was held invalid, the Court saying (p. 793):

"We may assume also that all its provisions were carefully worked out and met and expressed

> the exact intention of the legislative department. We must further assume that the Congress therein used the exact language and indeed all the language it desired to use as manifesting its judgment and its purpose in the premises. No other branch of the government has the power to add to or change those words, and if any defects in them should be developed in practical efforts to carry the law into full effect, executive officers have no power to supply that lack or amend the defect. The power to amend, as well as the power to enact a statute, rests exclusively in the legislative department."

In *California Wine Association* v. *Doran*, 28 F. (2d) 80, the Commissioner by regulation had prohibited the use of sparkling wines for sacramental purposes. The Court pointed out that the statute authorized the use of wine for sacramental purposes, without distinction as to kind, and held that such a regulation was in excess of authority.

In *Weste* v. *Campbell*, 21 F. (2d) 771, Judge Hutcheson said:

> "My impression of the case is that the Prohibition Acts, the Volstead Act and its amendments (27 USCA) purport to contain reasonably complete provisions as to the regulative and administrative features of them, *and that regulations* promulgated by the Department under the authority of the law *must, of course, conform to the general principle that they can enforce, explain, and apply the law;* THEY CAN NEVER MODIFY OR REMAKE IT, AND MUST ALWAYS BE IN CONFORMITY WITH IT; that it appears from section 9, tit. 2 of the act (27 USCA § 21), that

> permits were recognized as held under a qualified title, the fundamental basis of which was the good faith, the compliance by the permittee with the provisions of law controlling the disposition, the handling, and use of alcohol."

To the same effect are *Ex parte Sharp*, 13 F. (2d) 651, and *Stroh Products Co.* v. *Davis*, 8 F. (2d) 773.

And this Court in *United States* v. *Standard Brewery*, 251 U. S. 210, said of a determination by the Treasury Department under the War-Time Prohibition Act (pp. 219-220):

> "Nothing in the act remits the determination of that question to the decision of the revenue officers of the Government. While entitled to respect, as such decisions are, they cannot enlarge the meaning of a statute enacted by Congress. Administrative rulings cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

FOURTH: Permits cannot be revoked by a general regulation without regard for the limitations placed by Sections 5 and 9 of Title II upon revocations.

Section 5 of Title II provides:

> "Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.
>
> If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this title, his permit to manufacture and sell such article shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such article."

Section 9:

"If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of wilfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action such permit shall be temporarily revoked."

Section 260 of Regulations 60 provides:

"EXPIRATION, RENEWAL, MODIFICATION, ETC. —All basic permits, unless specifically limited to an earlier date, will expire, if issued prior to

August 31 of any year, on December 31 of that year, and if issued after August 31, on December 31 of the following year: PROVIDED, HOWEVER, That the foregoing shall not apply to special permits, nor to permits prefaced by the letter 'H' as prescribed in Section 240, and provided further that such 'H' permits shall continue in full force and effect so long as the supporting bond required by these regulations remains in full force and effect, or until canceled, suspended, revoked, or voluntarily surrendered by the permittee."

T. D. 3925 (in part):

"The following basic permits will continue in operation until surrendered by the permittee, or there is failure of required bond, or revocation on citation and hearing:

Permits to import and use liquors, designated as D Permits.

Permits to use alcohol and distilled spirits in manufacturing or compounding, designated as H Permits.

Permits to hospitals, sanitariums, first-aid stations, dispensaries, infirmaries, and like institutions to use liquors and alcohol, designated as Q Permits.

Permits to operate an alcohol bonded warehouse.

Permits to operate a denaturing plant.

Permits to use specially denatured alcohol."

T. D. 3773:

"All basic permits issued under Titles II and III of the National Prohibition Act shall expire on December 31, 1925; and thereafter all basic permits issued prior to August 31 of any calen-

dar year shall expire on December 31 of the same year; and all basic permits issued after August 31 of any calendar year shall expire on December 31 of the succeeding calendar year; PROVIDED, That the foregoing shall not apply to basic permits issued after August 31, 1925, to expire on December 31, 1925.

All regulations inconsistent herewith are hereby rescinded to the extent of such inconsistency."

Section 218 of Regulations 2:

"All permits to be renewed annually—All permits issued and in force and effect on the effective date of these regulations shall expire on December 31, 1928, unless renewed in the manner hereinafter specified; all permits hereafter issued, if issued prior to September 1 of any calendar year, shall expire on December 31 of the same year, and if issued after August 31 of any calendar year shall expire on December 31 of the succeeding calendar year, and may be renewed only in the manner hereinafter specified."

Sections 5 and 9, quoted above, contain all the provisions of the Act on the subject of revocation. Yet the defendants insist that they have "the right to promulgate general regulations having the effect of general legislation" (Brief, p. 23), and that they may provide in such regulations a method of termination different from that provided by the statute.

In its opinion in *Higgins* v. *Foster,* 12 F. (2d) 646, the Circuit Court of Appeals said, by Judge Learned Hand (p. 648):

"Moreover, if Section 9 of Title II applies to permits for denatured alcohol, *we cannot see that*

> *the Commissioner, under the guise of legislation, may do in gross what he had no power to do in detail.* If each holder of a permit was entitled to insist upon a hearing before revocation, *it would as much take away his right so created to cancel, along with his own, the permits of all others similarly situated, as though the action had been directed towards him alone."*

Conceding that the term of permits was in general a matter for the defendants to prescribe, *the special provision of the statute dealing with the subject of revocation withdrew that aspect of the term of permits from the general regulatory powers of the defendants.*

The argument is made that defendants, under the "quasi-legislative" powers granted by various sections of the Act, may do by general regulation what they may not do acting "quasi-judicially" under Section 9.

But the matter of revocation has been entrusted to the defendants only when acting "quasi-judicially."

As was said in the *Higgins* case, *supra:*

> *"As Section 9 of Title II prescribed that the delinquent must have fifteen days' notice and be served with a statement of the facts on which he was to suffer revocation, it applied to the plaintiff, if we are right, and the regulation of November 14, 1925, denied him a right which the statute gave him.* We need hardly add that this conclusion depends in no sense upon any vested right which he had in his permit, but *only upon such limitations as were created by the statute itself"* (p. 648).

True, Congress has authorized the defendants to issue regulations "for carrying out the provisions of the act"

(Sec. 1, par. 7, Title II). But the only provisions which deal with the subject of revocation are Sections 5 and 9. Section 218 of Regulations 2 does not tend to enforce Sections 5 and 9.*

The general power "to prescribe the form of permits" must be exercised in strict conformity with the statute and may not be used to deprive permittees of rights given by the statute. For instance, it could hardly be urged that a regulation could validly reduce the number of days' notice of a revocation hearing from the fifteen specified by Section 9, to ten.

That is, the defendants, in exercising any "quasi-legislative" powers, cannot deal with a matter inconsistently with the statute on the ground that the statute defines only their "quasi-judicial" powers. Any attempt to deal with the subject of revocation inconsistently with the way in which the statute has dealt with it must fail. *Morrill* v. *Jones,* 106 U. S. 466; *Waite* v. *Macy,* 246 U. S. 606; *International Ry. Co.* v. *Davidson,* 257 U. S. 506; *United States* v. *Standard Brewery,* 251 U. S. 210.

The lower Federal courts have repeatedly held that the commissioner cannot by regulations revoke existing permits without a substantial compliance with the provisions of Sections 5 or 9. *Weste* v. *Campbell,* 21 F. (2d) 771; *Lacquer & Chemical Corporation* v. *Mills,* 22 F. (2d) 697; *Higgins* v. *Foster,* 12 F. (2d) 646; *McGill* v. *Mellon,* 5 F. (2d) 262.

There is no analogy between this case and *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210. It is error to compare the Supreme Court of Appeals of Virginia, the

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*Article V of Regulations 2, providing in detail how the hearings required by these sections shall be conducted, for hearers, stenographic minutes, briefs, oral arguments, etc., are the regulations properly issued to carry out these sections of the statute. They illustrate the type of permissible regulations.

"historic body that is entrusted with the preservation of the most valued constitutional rights," with officers administering a police statute.

Nor has there been any bargaining away of police power. *Mugler* v. *Kansas,* 123 U. S. 623, is not in point. The question is not what Congress can do but what it has done. The question here is not of vested right, but of a right that may be canceled only as the statute has provided.

The purpose of the Commissioner in attempting to revoke all permits at one stroke under the guise of a regulation is obvious.

The decision of this Court in *Ma-King Products Co.* v. *Blair,* 271 U. S. 479, has generally been interpreted as permitting the enforcement officers to refuse permits at their discretion and to subject their acts to review only when they were capricious and arbitrary. *Milillo* v. *Canfield,* 14 F. (2d) 113. On the other hand, permits can be revoked under Sections 5 and 9 only after hearings in accordance with the statutory requirements and findings that there has been a violation of law.

But, if the enforcement officers could at one fell swoop revoke permits without the necessity of hearings guaranteed by the Act, the permittees seeking new permits would be subject to the discretionary action of the officers. Public policy and the orderly administration of the law does not favor such a system of annual permits and the annoyance, inconvenience and expense attendant upon their procurement. The disadvantages of such a system to the permittee are described by Professor Freund in "Administrative Powers Over Persons and Property" as follows (p. 111):

> "If the facilities are such as to make the renewal a ministerial act, the difference between

> the annual and the permanent license may be practically inconsiderable; without such facilities [and there are no such facilities in the Act or in regulations 2] an annual license may be more precarious than a revocable license, *since the burden of establishing qualification is laid again and again on the licensee.*"

Freund continues in a footnote:

> "*Perhaps the only thing that can be said in favor of annual occupation licenses is that they create an interest of solidarity on the part of license holders in resisting excessive administrative powers* * * *."

Freund, in a subsequent footnote, describes the situation in the City of Chicago created by a law restricting liquor licenses in number and at the same time providing for a duration of only one year. The Mayor was held to possess a discretion as to renewals which the Courts could not control by mandamus.

> "Naturally, the Mayor would exercise the discretion in favor of existing holders, for to do otherwise (e. g. priority of application) *would have thrown the business into the hands of the least desirable persons, since responsible parties would hardly have entered it with no assured prospect of continuance beyond one year.*"

As the Court said in *McGill* v. *Mellon,* 5 F. (2d) 262, 264:

> "Permittees do not hold their permits at the mere whim or will of prohibition officials. To hold otherwise would be to put into the hands of individuals, who happen for the moment to be commissioners or inspectors, a power of economic life and death over a considerable number of innocuous or useful industries."

We submit that medicinal preparations "unfit for beverage purposes" authorized to be manufactured by Section 4 of Title II are not liquor within the meaning of Sections 1 and 6 of the National Prohibition Act either before or after manufacture; that the provisions of Section 6 which require permits to manufacture liquor to expire on the 31st day of December next succeeding the issuance thereof, have no application to the basic permits to manufacture non-beverage articles under Section 4; that the provision of Section 6 which provides that every permit shall designate and limit the acts that are permitted and the time when and the place where such acts may be performed, have no reference to such permits; that any such requirement of time limitation is fully complied with by the provision of the plaintiff's permit; that such permits to use alcohol, whisky, etc., for non-beverage purposes were limited solely on revocation prior to the Prohibition Act and were carried over into that act; that regulations cannot prescribe a calendar limitation of time when Congress has failed so to do, and finally that the defendant may not by general regulations destroy the plaintiff's permit in violation of the statutory scheme provided in Sections 5 and 9 of the Act.

It is respectfully submitted that the decrees of the United States Circuit Court of Appeals should be affirmed.

Respectfully submitted,

JOHN FLETCHER CASKEY,
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New York, N. Y.,
April, 1930.

APPENDIX.

THE NATIONAL PROHIBITION ACT.

(41 Stat. 305.)

AN ACT to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries.

TITLE II.

PROHIBITION OF INTOXICATING BEVERAGES.

SEC. 1. When used in Title II and Title III of this Act (1) the word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: *Provided,* That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in Section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

* * * (7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this Act, and the commissioner is authorized to make such regulations.

SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided,* That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.

SEC. 4. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the report specified in this Act and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup, or the articles named in paragraphs b, c, and d of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this

section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in Section 29 of this Title. If the commissioner shall find, after notice and hearing as provided for in Section 5 of this Title, that any person has sold any flavoring extract, sirup, or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales.

SEC. 5. Whenever the commissioner has reason to believe that any article mentioned in Section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be

served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in Section 4 of this Title, his permit to manufacture and sell such article shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the Court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant, and during the pendency of such proceeding may restrain the manufacture, sale, or other disposition of such article.

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall

expire on the 31st day of December next succeeding the issuance thereof: *Provided,* That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided further,* That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this Title or any law of the United States or of any State regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in Section 5 hereof.

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except Section 6 (save as the same requires a permit to purchase) and Section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribed shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture.

SEC. 9. If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this Act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of wilfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this Act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in Section 5 hereof. During the pendency of such action such permit shall be temporarily revoked.

TITLE III.

INDUSTRIAL ALCOHOL.

SEC. 1. When used in this title—

The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced.

The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding, storing, transferring, or shipment of alcohol.

TAX-FREE ALCOHOL.

SEC. 10. Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export.

Nothing in this Act shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same.

SEC. 13. The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure

the revenue, to prevent diversion of the alcohol to illegal uses, and to place the non-beverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

SECTION 260 OF REGULATIONS 60.

SEC. 260. *Expiration, Renewal, Modification, etc.*— All basic permits, unless specially limited to an earlier date, will expire, if issued prior to August 31 of any year, on December 31 of that year, and if issued after August 31, on December 31 of the following year: *Provided, however,* That the foregoing shall not apply to special permits, nor to permits prefaced by the letter 'H' as prescribed in Section 240, and *provided further* that such 'H' permits shall continue in full force and effect so long as the supporting bond required by these regulations remains in full force and effect, or until canceled, suspended, revoked, or voluntarily surrendered by the permittee.

ARTICLE 21 OF REGULATIONS 61 (IN PART).

Permits issued will remain in force until voluntarily surrendered or revoked by the commissioner. Violation of any of the provisions of law or regulations relating to these plants or to the alcohol produced thereat may, in the discretion of the commissioner, be regarded as grounds for issuance of a citation for revocation of permit.

T. D. 3925 (IN PART):

The following basic permits will continue in operation until surrendered by the permittee, or there is failure of required bond, or revocation on citation and hearing:

Permits to import and use liquors, designated as D Permits.

Permits to use alcohol and distilled spirits in manufacturing or compounding, designated as H Permits.

Permits to hospitals, sanitariums, first-aid stations, dispensaries, infirmaries, and like institutions to use liquors and alcohol, designated as Q Permits.

Permits to operate an alcohol bonded warehouse.

Permits to operate a denaturing plant.

Permits to use specially denatured alcohol.

T. D. 3773:

All basic permits issued under Titles II and III of the National Prohibition Act shall expire on December 31, 1925; and thereafter all basic permits issued prior to August 31 of any calendar year shall expire on December 31 of the same year; and all basic permits issued after August 31 of any calendar year shall expire on December 31 of the succeeding calendar year; *Provided,* That the foregoing shall not apply to basic permits issued after August 31, 1925, to expire on December 31, 1925.

All regulations inconsistent herewith are hereby rescinded to the extent of such inconsistency.

SECTION 218 OF REGULATIONS 2.

All permits to be renewed annually—All permits issued and in force and effect on the effective date of these

regulations shall expire on December 31, 1928, unless renewed in the manner hereinafter specified; all permits hereafter issued, if issued prior to September 1 of any calendar year, shall expire on December 31 of the same year, and if issued after August 31 of any calendar year shall expire on December 31 of the succeeding calendar year, and may be renewed only in the manner hereinafter specified.

ARTICLE 95 OF REGULATIONS 3 (IN PART).

Permits issued to operate denaturing plants in force and effect on the effective date of these regulations shall expire on December 31, 1928, unless renewed; all permits hereafter issued, if issued prior to September 1 of any calendar year, shall expire on December 31 of the same year; and if issued after August 31 of any calendar year, shall expire on December 31 of the succeeding calendar year, unless duly renewed.

T. D. 2788.

Permits.

(8) All persons, firms, or corporations (except distillers and proprietors of bonded warehouses, bonded wineries and bonded storerooms, making deliveries in the original taxpaid packages, who are already required to give bonds) desiring to use or sell distilled spirits or wines for other than beverage purposes, will be required, first, to qualify therefor by filing with the collector of the district in which the business is to be conducted an application, in duplicate, for a permit, and a bond, in

duplicate, to be approved by the collector of the district.

* * * * * *

(*d*) In the case of alcoholic medicinal compounds which are not in conformity with the United States Pharmacopoeia or National Formulary, the manufacturer will file with the collector, when requesting a permit for the use of non-beverage alcohol or non-beverage wines, the following data in duplicate: The name of the preparation, by whom manufactured, for whom manufactured in cases where same is not placed on the market by the manufacturer, the advertising matter distributed with the preparation, and the percentage of alcohol by volume contained in the finished product.

* * * * * *

(*j*) If it should appear on proper showing made at any time that the party to whom the permit has been issued has wilfully violated any of the provisions of the law or regulations relating to the using or handling of such spirits or wines, it shall be the duty of the Collector to recall and cancel the permit and report the facts to the Commissioner of Internal Revenue with his recommendations in the premises.

* * * * * *

(*m*) The following form of application, which when approved by the collector becomes a permit, must be used:

U. S. Internal Revenue. Serial No. of Permit
Form 737. .....

APPLICATION FOR PERMIT TO USE OR SELL DISTILLED SPIRITS OR WINES FOR OTHER THAN BEVERAGE PURPOSES, WITH COLLECTOR'S APPROVAL THEREOF.

To.....

Collector, ...*District of*.....

The undersigned, having filed appropriate bond, hereby makes application to *use and sell distilled spirits and wines* for other than beverage purposes.

(If this space is insufficient to enter required details, same may be contained in a separate sheet to be pasted hereto.)

The probable quantity that will remain outstanding as a charge against the applicant's bond undisposed of, in transit, in process of manufacture, or on storage, will be.....proof gallons of distilled spirits and .....wine gallons of wine.

(Signed).....

.....

Approved: .....

.....

Collector, ...*District of*.....

Dated, ..., 19....

* * * * * *

(*n*) The application should be made in duplicate. One copy after approval will be retained by the collector in his files and the other with the collector's approval indorsed thereon will be returned to the applicant, who will post the same conspicuously in his place of busi-

ness. The application so approved, which by the act of approval becomes *a continuing permit, is non-transferable and may be revoked and canceled by the Commissioner of Internal Revenue or by the collector of the district.*

* * * * * *

(11) Distilled spirits or wines for other than beverage purposes may be used only in the arts, sciences, and trades where the circumstances are such that there can be no probability that the spirits or wines will be sold or used for beverage purposes or in the manufacture or production of any article intended for use as a beverage. The use for other than beverage purposes would include the manufacture of bona fide United States Pharmacopoeia or National Formulary, medicinal, culinary, and flavoring extracts, as well as cosmetics and toilet preparations, including bay rum, perfumery and toilet waters, extract of witch hazel and listerine, and would include proprietary medicines for which special tax is not required as rectifier from the producer, or special tax as wholesale or retail liquor dealer from the vendor.